

FIRST REGULAR SESSION

SENATE BILL NO. 1

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0404S.011

AN ACT

To amend chapters 333 and 436, RSMo, by adding thereto thirty-four new sections relating to preneed funeral contracts, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 333 and 436, RSMo, are amended by adding thereto
2 thirty-four new sections, to be known as sections 333.300, 333.305, 333.310,
3 333.315, 333.320, 333.325, 333.330, 333.335, 333.340, 436.400, 436.405, 436.410,
4 436.415, 436.420, 436.425, 436.430, 436.435, 436.440, 436.445, 436.450, 436.455,
5 436.456, 436.457, 436.458, 436.460, 436.465, 436.470, 436.480, 436.485, 436.490,
6 436.500, 436.505, 436.510, and 436.520, to read as follows:

**333.300. Sections 333.300 to 333.335 shall only apply to sellers,
2 providers, and preneed agents with respect to preneed contracts
3 entered into after August 28, 2009.**

**333.305. As used in sections 333.300 to 333.335, unless the context
2 otherwise requires, the following terms shall mean:**

3 (1) "Board", the Missouri state board of embalmers and funeral
4 directors within the division of professional registration of the
5 department of insurance, financial institutions and professional
6 registration;

7 (2) "Funeralmerchandise", caskets, grave vaults, receptacles, and
8 other personal property incidental to the final disposition of a dead
9 human body including grave lots, grave spaces, grave markers,
10 monuments, tombstones, crypts, niches, mausoleums, and urns;

11 (3) "Insurance funded preneed contract", a preneed contract
12 which is designated to be funded by payments or proceeds from an
13 insurance policy;

14 (4) "Joint account funded preneed contract", a preneed contract
15 which designates that payments for the preneed contract made by or
16 on behalf of the purchaser will be deposited and maintained in a joint
17 account in the names of the purchaser and provider;

18 (5) "Person", any individual, partnership, corporation,
19 cooperative, association, or other entity;

20 (6) "Preneed agent", any person authorized to sell a preneed
21 contract for or on behalf of a seller;

22 (7) "Preneed contract", any contract or other arrangement which
23 provides for the final disposition of a dead human body, funeral or
24 burial services or facilities, or funeral merchandise, where such
25 disposition, services, facilities, or merchandise are not immediately
26 required. Such contracts include, but are not limited to, agreements
27 providing for a membership fee or any other fee for the purpose of
28 furnishing final disposition, funeral or burial services or facilities, or
29 funeral merchandise at a discount or at a future date;

30 (8) "Preneed trust", a trust established by a seller to receive
31 deposits of, administer, and disburse payments received under preneed
32 contracts by such seller, together with income thereon;

33 (9) "Provider", the person designated to provide the final
34 disposition, funeral or burial services or facilities, or funeral
35 merchandise described in a preneed contract;

36 (10) "Purchaser", the person who is obligated to pay under a
37 preneed contract;

38 (11) "Seller", the person who executes a preneed contract with a
39 purchaser and who is obligated under such preneed contract to remit
40 payment to the provider;

41 (12) "Trustee", the trustee of a preneed trust, including successor
42 trustees.

 333.310. The provisions of sections 333.300 to 333.335 shall not
2 apply to a cemetery operator who sells contracts or arrangements for
3 services for which payments received by, or on behalf of, the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo,
6 provided that a cemetery operator shall comply with sections 333.300
7 to 333.335 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or

9 embalmer.

333.315. 1. No person shall be designated as a provider, or agree
2 to perform the obligations of a provider under a preneed contract
3 unless, at the time of such agreement or designation, such person is
4 licensed as a preneed provider by the board. Nothing in this section
5 shall exempt any person from meeting the licensure requirements for
6 a funeral establishment as provided in this chapter.

7 2. An applicant for a preneed provider license shall:

8 (1) File an application on a form established by the board and
9 pay a licensing fee in an amount established by the board by rule;

10 (2) Be authorized and registered with the Missouri secretary of
11 state to conduct business in Missouri;

12 (3) Identify the name and address of a custodian of records
13 responsible for maintaining the books and records of the provider
14 relating to preneed contracts;

15 (4) Identify the name and address of each seller authorized by
16 the provider to sell preneed contracts in which the provider is
17 designated or obligated as the provider;

18 (5) File with the state board, a written consent authorizing the
19 state board to inspect or order an investigation, examination, or audit
20 of the provider's books and records which contain information
21 concerning preneed contracts sold for or on behalf of a seller or in
22 which the applicant is named as a provider;

23 (6) Be of good moral character. If the applicant is a corporation,
24 each officer, director, manager, or controlling shareholder, shall be of
25 good moral character; and

26 (7) Have obtained a high school diploma or equivalent thereof.

27 3. Each preneed provider shall apply to renew his or her license
28 on or before October thirty-first of each year or a date established by
29 the board by rule. A license which has not been renewed prior to the
30 renewal date shall expire. Applicants for renewal shall:

31 (1) File an application for renewal on a form established by the
32 board by rule;

33 (2) Pay a renewal fee in an amount established by the board by
34 rule;

35 (3) Be authorized and registered with the Missouri secretary of
36 state to conduct business in Missouri;

37 **(4) File an annual report with the state board which shall**
38 **contain:**

39 **(a) The name and address of a custodian of records responsible**
40 **for maintaining the books and records of the provider relating to**
41 **preneed contracts;**

42 **(b) The business name or names of the provider and all**
43 **addresses from which it engages in the practice of its business;**

44 **(c) The name and address of each seller with whom it has**
45 **entered into a written agreement since last filing an annual report with**
46 **the board authorizing the seller to designate or obligate the licensee as**
47 **the provider in a preneed contract; and**

48 **(d) Any information required by the board by rule.**

49 **4. A license which has not been renewed as provided by this**
50 **section shall expire. A licensee who fails to apply for renewal may**
51 **apply for reinstatement by satisfying the requirements of subsection 3**
52 **of this section and paying a delinquent fee as established by the board**
53 **by rule.**

333.320. 1. No person shall sell, perform, or agree to perform the
2 **seller's obligations under, or be designated as the seller of, any preneed**
3 **contract unless, at the time of the sale, performance, agreement, or**
4 **designation, such person is licensed by the board as a seller and**
5 **authorized and registered with the Missouri secretary of state to**
6 **conduct business in Missouri.**

7 **2. An applicant for a preneed seller license shall:**

8 **(1) File an application on a form established by the board and**
9 **pay a licensing fee in an amount established by the board by rule;**

10 **(2) Be an individual resident of Missouri of eighteen years of age**
11 **or a business entity registered with the Missouri secretary of state to**
12 **transact business in Missouri;**

13 **(3) Be of good moral character. If the applicant is a corporation,**
14 **each officer, director, manager, or controlling shareholder, shall be of**
15 **good moral character;**

16 **(4) Have obtained a high school diploma or equivalent thereof;**

17 **(5) Meet all requirements for licensure;**

18 **(6) Identify the name and address of a custodian of records**
19 **responsible for maintaining the books and records of the seller relating**
20 **to preneed contracts;**

21 (7) Identify the name and address of each licensed provider that
22 has authorized the seller to designate such person as a provider under
23 a preneed contract;

24 (8) Have established, as grantor, a preneed trust or an agreement
25 to utilize a preneed trust with terms consistent with sections 436.400 to
26 436.520, RSMo. A trust shall not be required if the applicant certifies
27 to the board that the seller will only sell insurance funded or joint
28 account funded preneed contracts;

29 (9) Identify the name and address of a trustee or, if applicable,
30 the financial institution where any preneed trust or joint accounts will
31 be maintained; and

32 (10) File with the board, a written consent authorizing the state
33 board to inspect or order an investigation, examination, or audit of the
34 seller's books and records which contain information concerning
35 preneed contracts sold by or on behalf of the seller.

36 3. Each seller shall apply to renew his or her license on or before
37 October thirty-first of each year or a date established by the board by
38 rule. A license which has not been renewed prior to the renewal date
39 shall expire. Applicants for renewal shall:

40 (1) File an application for renewal on a form established by the
41 board by rule;

42 (2) Pay a renewal fee in an amount established by the board by
43 rule; and

44 (3) File annually with the board, a signed and notarized annual
45 report as required by section 436.400, RSMo.

46 4. Any license which has not been renewed as provided by this
47 section shall expire. A licensee who fails to apply for renewal may
48 apply for reinstatement by satisfying the requirements of subsection 3
49 of this section and paying a delinquent fee as established by the board
50 by rule.

333.325. 1. No person shall sell, negotiate, or solicit the sale of
2 preneed contracts for, or on behalf of, a seller unless registered with
3 the board as a preneed agent. The board shall maintain a registry of
4 all preneed agents registered with the board. The registry shall be
5 deemed an open record and made available on the board's website.

6 2. An applicant for a preneed agent registration shall:

7 (1) File an application on a form established by the board and

8 pay a registration fee in an amount established by the board by rule
9 which shall not exceed fifty percent of the application fee established
10 by the board under this chapter for a funeral director license;

11 (2) Be eighteen years of age;

12 (3) Be of good moral character. If the applicant is a corporation,
13 each officer, director, manager, or controlling shareholder, shall be of
14 good moral character;

15 (4) Have obtained a high school diploma or equivalent thereof;
16 and

17 (5) Have successfully passed the Missouri law examination as
18 designated by the board;

19 (6) Provide the name and address of each seller for whom the
20 applicant is authorized to sell, negotiate, or solicit the sale of preneed
21 contracts for, or on behalf of.

22 3. Each preneed agent shall apply to renew his or her
23 registration on or before October thirty-first of each year or a date
24 established by the board by rule. A registration which has not been
25 renewed prior to the renewal date shall expire. Applicants for renewal
26 shall:

27 (1) File an application for renewal on a form established by the
28 board by rule;

29 (2) Pay a renewal fee in an amount established by the board by
30 rule which shall not exceed fifty percent of the application fee
31 established by the board under this chapter for a funeral director
32 license renewal; and

33 (3) Provide the name and address of each seller for whom the
34 preneed agent is authorized to sell, negotiate, or solicit the sale of
35 preneed contracts for or on behalf of.

36 4. Any registration which has not been renewed as provided by
37 this section shall expire and the registrant shall be immediately
38 removed from the preneed agent registry by the board. A registrant
39 who fails to apply for renewal may apply for reinstatement by
40 satisfying the requirements of subsection 3 of this section and paying
41 a delinquent fee as established by the board.

333.330. 1. The board may refuse to issue any certificate of
2 registration or authority, permit, or license required under sections
3 333.300 to 333.335 for one or any combination of causes stated in

4 subsection 2 of this section. The board shall notify the applicant in
5 writing of the reasons for the refusal and shall advise the applicant of
6 his or her right to file a complaint with the administrative hearing
7 commission as provided by chapter 621, RSMo.

8 2. The board may cause a complaint to be filed with the
9 administrative hearing commission as provided by chapter 621, RSMo,
10 against any holder of any certificate of registration or authority,
11 permit, or license required by this chapter or any person who has
12 failed to renew or has surrendered his or her certificate of registration
13 or authority, permit, or license for any one or any combination of the
14 following causes:

15 (1) Use of any controlled substance, as defined in chapter 195,
16 RSMo, or alcoholic beverage to an extent that such use impairs a
17 person's ability to perform the work of any profession licensed or
18 regulated under sections 333.300 to 333.340;

19 (2) The person has been finally adjudicated and found guilty, or
20 entered a plea of guilty or nolo contendere, in a criminal prosecution
21 under the laws of any state or of the United States, for any offense
22 reasonably related to the qualifications, functions, or duties of any
23 profession licensed or regulated under this chapter, for any offense
24 involving a controlled substance, or for any offense an essential
25 element of which is fraud, dishonesty, or an act of violence, or for any
26 offense involving moral turpitude, whether or not sentence is imposed;

27 (3) Use of fraud, deception, misrepresentation, or bribery in
28 securing any certificate of registration or authority, permit, or license
29 issued under this chapter or in obtaining permission to take any
30 examination given or required under this chapter;

31 (4) Obtaining or attempting to obtain any fee, charge, tuition, or
32 other compensation by fraud, deception, or misrepresentation;

33 (5) Incompetency, misconduct, gross negligence, fraud,
34 misrepresentation, or dishonesty in the performance of the functions
35 or duties of any profession licensed or regulated under sections 333.300
36 to 333.340;

37 (6) Violation of, or assisting or enabling any person to violate,
38 any provision of sections 436.400 to 436.520, RSMo, regulating preneed,
39 or of any lawful rule or regulation adopted pursuant thereto;

40 (7) Impersonation of any person holding a certificate of

41 registration or authority, permit, or license or allowing any person to
42 use his or her certificate of registration or authority, permit, license,
43 or diploma from any school;

44 (8) Disciplinary action against the holder of a license or other
45 right to practice any profession regulated under sections 333.300 to
46 333.350 granted by another state, territory, federal agency, or country
47 upon grounds for which revocation or suspension is authorized in this
48 state;

49 (9) A person is finally adjudged insane or incompetent by a court
50 of competent jurisdiction;

51 (10) Misappropriation or theft of preneed funds;

52 (11) Assisting or enabling any person to practice or offer to
53 practice any profession licensed or regulated by the provisions of
54 sections 333.300 to 333.350 regulating preneed who is not licensed or
55 registered and currently eligible to practice thereunder;

56 (12) Issuance of a certificate of registration or authority, permit,
57 or license based upon a material mistake of fact;

58 (13) Failure to display a valid certificate or license if so required
59 by this the provisions of sections 436.400 to 436.520, RSMo, regulating
60 preneed or any rule established thereunder;

61 (14) Violation of any professional trust or confidence;

62 (15) Making or filing any report required by the provisions of
63 sections 436.400 to 436.520, RSMo, regulating preneed which the
64 licensee knows to be false or knowingly failing to make or file a report
65 required by such provisions;

66 (16) Use of any advertisement or solicitation which is false,
67 misleading, or deceptive to the general public or persons to whom the
68 advertisement or solicitation is primarily directed; or

69 (17) Willfully and through undue influence selling a preneed
70 contract.

71 3. After the filing of such complaint, the proceedings shall be
72 conducted in accordance with the provisions of chapter 621,
73 RSMo. Upon a finding by the administrative hearing commission that
74 the grounds, provided in subsection 2 of this section, for disciplinary
75 action are met, the board may, singly or in combination, censure or
76 place the person named in the complaint on probation on such terms
77 and conditions as the board deems appropriate for a period not to

78 exceed five years, or may suspend, for a period not to exceed three
79 years, or revoke the license or registration.

80 4. Notwithstanding any other provision of this section to the
81 contrary, the board may immediately suspend a preneed seller license
82 if the board finds, after an inspection, examination, investigation, or
83 audit, a shortage in any preneed trust or joint account which exceeds
84 twenty percent of the total amount required to be held or deposited in
85 the trust or account pursuant to the provisions of sections 436.400 to
86 436.520, RSMo.

87 5. Any person whose license is suspended under subsection 4 of
88 this section may appeal such suspension to the administrative hearing
89 commission. Notice of such appeal shall be received by the
90 administrative hearing commission within ninety days of mailing, by
91 certified mail, the notice of suspension. Failure of a person whose
92 license was suspended to notify the administrative hearing commission
93 of his or her intent to appeal waives all rights to appeal the
94 suspension. Upon notice of such person's intent to appeal, a hearing
95 shall be held before the administrative hearing commission pursuant
96 to chapter 621, RSMo.

97 6. Use of the procedures set out in this section shall not preclude
98 the application of the provisions of subsection 2 of section 333.061.

333.335. 1. Upon application by the board, and the necessary
2 burden having been met, a court of general jurisdiction may grant an
3 injunction, restraining order, or other order as may be appropriate to
4 enjoin a person from:

5 (1) Offering to engage or engaging in the performance of any acts
6 or practices for which a registration or authority, permit, or license is
7 required by sections 333.300 to 333.340 upon a showing that such acts
8 or practices were performed or offered to be performed without the
9 required registration or authority, permit, or license; or

10 (2) Engaging in any practice or business authorized by a
11 registration or authority, permit or license issued pursuant to sections
12 333.300 to 333.340 that is in violation of sections 333.300 to 333.340 or
13 upon a showing that the holder presents a substantial probability of
14 serious danger to the health, safety or welfare of any resident of this
15 state or client or customer of the licensee or registrant; or

16 (3) Engaging in any practice or business that presents a

17 **substantial probability of serious danger to the solvency of any seller.**

18 **2. Any such action shall be commenced either in the county in**
19 **which such conduct occurred or in the county in which the defendant**
20 **resides or, in the case of a firm or corporation, where the firm or**
21 **corporation maintains its principal office or in Cole county.**

22 **3. Any action brought under this section shall be in addition to**
23 **and not in lieu of any penalty provided by sections 333.300 to 333.340**
24 **and may be brought concurrently with other actions to enforce sections**
25 **333.300 to 333.340.**

333.340. 1. The board shall establish the amount of the fees
2 **authorized under sections 333.300 to 333.335 and required by rules**
3 **established thereunder. Such fees shall be set at a level to produce**
4 **revenue which does not substantially exceed the cost and expense of**
5 **administering sections 333.300 to 333.335.**

6 **2. The board shall promulgate and enforce rules for the**
7 **transaction of its business and for standards of service and practice to**
8 **be followed for the licensing and registration of providers, sellers and**
9 **preneed agents deemed necessary for the public good and consistent**
10 **with the laws of this state.**

11 **3. Any rule or portion of a rule, as that term is defined in section**
12 **536.010, RSMo, that is created under the authority delegated in this**
13 **section shall become effective only if it complies with and is subject to**
14 **all of the provisions of chapter 536, RSMo, and, if applicable, section**
15 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
16 **and if any of the powers vested with the general assembly pursuant to**
17 **chapter 536, RSMo, to review, to delay the effective date, or to**
18 **disapprove and annul a rule are subsequently held unconstitutional,**
19 **then the grant of rulemaking authority and any rule proposed or**
20 **adopted after August 28, 2009, shall be invalid and void.**

436.400. The provisions of sections 436.400 to 436.520 shall be
2 **referenced as the "Missouri Preneed Funeral Contract Act" and shall**
3 **apply only to preneed contracts entered into after August 28, 2009.**

436.405. As used in sections 436.400 to 436.520, unless the context
2 **otherwise requires, the following terms shall mean:**

3 **(1) "Beneficiary", the individual who is to be the subject of the**
4 **disposition or who will receive funeral services, facilities, or**
5 **merchandise described in a preneed contract;**

6 (2) "Board", the Missouri state board of embalmers and funeral
7 directors;

8 (3) "Division", the division of professional registration of the
9 department of insurance, financial institutions and professional
10 registration;

11 (4) "Funeral merchandise", caskets, grave vaults, or receptacles,
12 and other personal property incidental to the final disposition of a
13 dead human body and such term shall also include grave lots, grave
14 spaces, grave markers, monuments, tombstones, crypts, niches,
15 mausoleums, and urns;

16 (5) "Guaranteed contract", a preneed contract in which the seller
17 promises, assures, or guarantees to the purchaser that all or any
18 portion of the costs for the disposition, services, facilities, or
19 merchandise identified in a preneed contract will be no greater than
20 the price designated in the contract upon the preneed beneficiary's
21 death or that such costs will be otherwise limited or restricted;

22 (6) "Insurance funded preneed contract", a preneed contract
23 which is designated to be funded by payments or proceeds from an
24 insurance policy;

25 (7) "Joint account funded preneed contract", a preneed contract
26 which designates that payments for the preneed contract made by or
27 on behalf of the purchaser will be deposited and maintained in a joint
28 account in the names of the purchaser and provider;

29 (8) "Market value", a fair market value:

30 (a) As to cash, the amount thereof;

31 (b) As to a security as of any date, the price for the security as
32 of that date obtained from a generally recognized source, or to the
33 extent no generally recognized source exists, the price to sell the
34 security in an orderly transaction between unrelated market
35 participants at the measurement date; and

36 (c) As to any other asset, the price to sell the asset in an orderly
37 transaction between unrelated market participants at the measurement
38 date consistent with statements of financial accounting standards;

39 (9) "Non-guaranteed contract", a preneed contract in which the
40 seller does not promise, assure, or guarantee that all or any portion of
41 the costs for the disposition, facilities, service, or merchandise
42 identified in a preneed contract will be limited to the price designated

43 in the contract upon the preneed beneficiary's death or that such costs
44 will be otherwise limited or restricted;

45 (10) "Person", any individual, partnership, corporation,
46 cooperative, association, or other entity;

47 (11) "Preneed agent", any person authorized to sell a preneed
48 contract for, or on behalf of, a seller;

49 (12) "Preneed contract", any contract or other arrangement
50 which provides for the final disposition of a dead human body, funeral
51 or burial services or facilities, or funeral merchandise, where such
52 disposition, services, facilities, or merchandise are not immediately
53 required. Such contracts include, but are not limited to, agreements
54 providing for a membership fee or any other fee for the purpose of
55 furnishing final disposition, funeral or burial services or facilities, or
56 funeral merchandise at a discount or at a future date;

57 (13) "Preneed trust", a trust established by a seller to receive
58 deposits of, administer, and disburse payments received under preneed
59 contracts by such seller, together with income thereon;

60 (14) "Provider", the person designated to provide the disposition,
61 funeral or burial services or facilities, or merchandise described in a
62 preneed contract;

63 (15) "Purchaser", the person who is obligated to pay under a
64 preneed contract;

65 (16) "Seller", the person who executes a preneed contract with a
66 purchaser and who is obligated under such preneed contract to remit
67 payment to the provider;

68 (17) "Trustee", the trustee of a preneed trust, including successor
69 trustees;

70 (18) "Trust funded preneed contract", a preneed contract which
71 provides that payments for the preneed contract shall be deposited and
72 maintained in trust;

436.410. The provisions of sections 436.400 to 436.520 shall not
2 apply to any contract or other arrangement sold by a cemetery
3 operator for which payments received by or on behalf of the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo,
6 provided that a cemetery operator shall comply with sections 436.400
7 to 436.520 if the contract or arrangement sold by the operator includes

8 services that may only be provided by a licensed funeral director or
9 embalmer.

436.415. 1. Except as otherwise provided in sections 436.400 to
2 436.520, the provider designated in a preneed contract shall be
3 obligated to provide final disposition, funeral or burial services and
4 facilities, and funeral merchandise as described in the preneed
5 contract.

6 2. The seller designated in a preneed contract shall be obligated
7 to administer all payments made by, or on behalf of, a purchaser of a
8 preneed contract and ensure the preneed contract is managed and
9 fulfilled, and payments remitted, in compliance with sections 436.400
10 to 436.520 and as provided by the contract.

436.420. 1. No person shall be designated as a provider in a
2 preneed contract unless the provider has a written contractual
3 agreement with the seller. Any seller who designates a person as a
4 provider in a preneed contract without a contractual relationship with
5 such person is in violation of the provisions of sections 436.400 to
6 436.520.

7 2. The written agreement required by this section shall include:

8 (1) Written consent from the provider authorizing the seller to
9 designate or obligate the provider under a preneed contract;

10 (2) Procedures for tracking preneed contract funds or payments
11 received by the provider and for remitting such funds or payments to
12 the seller, including, the time period authorized by the seller for the
13 remittance of funds and payments; and

14 (3) The signatures of the seller and the provider or their
15 authorized representatives and the date such signature was obtained.

16 3. A provider shall notify the board within fifteen days of
17 authorizing or otherwise agreeing to allow a seller to designate himself
18 or herself as the provider under any preneed contract.

19 4. Any person who knowingly permits a seller to sell a preneed
20 contract designating him or her as the provider shall be obligated to
21 provide the final disposition, funeral and burial services and facilities,
22 and funeral merchandise as described in the preneed contract for the
23 beneficiary. A provider who has knowledge that a seller has designated
24 himself or herself as a provider under a preneed contract without
25 authorization, shall notify the board in writing within thirty days of

26 obtaining such knowledge.

27 5. Failure to comply with the provisions of this section shall be
28 cause for discipline of a person licensed or registered by the board
29 under sections 333.300 to 333.340, RSMo.

30 6. Upon request of the board, a licensed seller or provider shall
31 provide a copy of any preneed contract or any contract or agreement
32 with a seller or provider to the board.

436.425. 1. All preneed contracts shall be in writing and shall
2 clearly and conspicuously:

3 (1) Include the name, address and phone number of the
4 purchaser, beneficiary, provider and seller;

5 (2) Identify the name, address, phone and license number of the
6 provider and the seller;

7 (3) Set out in detail the disposition, funeral and burial services
8 and facilities, and merchandise requested;

9 (4) Identify whether the contract is trust funded, insurance
10 funded, or joint account funded;

11 (5) Include notice that the cancellation of the contract shall not
12 cancel any life insurance funding the contract, and that insurance
13 cancellation is required to be made in writing to the insurer;

14 (6) Include notice that the purchaser will only receive the cash
15 surrender value of any insurance policy funding the contract if
16 cancelled after a designated time, which may be less than the amount
17 paid into the policy;

18 (7) Include notice that the purchaser has the right to transfer the
19 provider designation to another provider;

20 (8) Prominently identify whether the contract is revocable or
21 irrevocable;

22 (9) Set forth the terms for cancellation by the purchaser or by
23 the seller;

24 (10) Identify any preneed trust or joint account into which
25 contract payments shall be deposited, including the name and address
26 of the corresponding trustee or financial institution;

27 (11) Include the name, address and phone number of any
28 insurance company issuing an insurance policy used to fund the
29 preneed contract;

30 (12) Include the name and signature of the purchaser, the

31 preneed agent responsible for the sale of the contract, and the seller or
32 its authorized representative;

33 (13) Prominently identify whether the contract is a guaranteed
34 or non-guaranteed contract in a recognizable font;

35 (14) Include any applicable consumer disclosures required by the
36 board by rule and;

37 (15) Comply with the provisions of section 436.400 to 436.520 or
38 any rule promulgated thereunder.

39 2. A preneed contract shall be voidable and unenforceable at the
40 option of the purchaser, or the purchaser's legal representative, if the
41 contract is not in compliance with this section or not issued by a seller
42 licensed under sections 333.300 to 333.340, RSMo. Upon exercising the
43 option, all payments made under such contract shall be recoverable by
44 the purchaser, or the purchaser's legal representative, from the
45 contract seller or other payee thereof.

46 3. A preneed contract shall only be designated as irrevocable if
47 the purchaser is using the contract to qualify for Medicaid. All
48 purchasers shall have the right to cancel or rescind a revocable
49 preneed contract and transfer any preneed contract with or without
50 cause.

51 4. A preneed contract shall not be redesignated as a trust funded,
52 insurance funded, or joint account funded preneed contract without the
53 consent of the purchaser.

436.430. 1. A seller shall deposit one hundred percent of the
2 payments received on a trust funded preneed contract into a trust
3 designated by this section within sixty days of receipt of such funds by
4 the seller or its designee.

5 2. The trustee of a preneed trust shall be a state or federally
6 chartered financial institution authorized to exercise trust powers in
7 Missouri. The trustee shall accept all deposits made to it for a preneed
8 contract and shall hold, administer, and distribute such deposits, in
9 trust, as trust principal, pursuant to sections 436.400 to 436.520.

10 3. The financial institution referenced herein may neither
11 control, nor be controlled by, or under common control with the
12 seller. The terms "control", "controlled by" and "under common control
13 with" means, the direct or indirect possession of the power to direct or
14 cause the direction of the management and policies of a person, whether

15 through the ownership of voting securities, or by contact unless the
16 power is the result of an official position with the corporate office held
17 by the person. Control shall be presumed to exist if any person,
18 directly or indirectly, owns, controls, holds with the power to vote, or
19 holds proxies representing, ten percent or more of the voting securities
20 of any other person. This presumption may be rebutted by a showing
21 to the board that control does not in fact exist.

22 4. Payments regarding two or more preneed contracts may be
23 deposited into and commingled in the same preneed trust, so long as
24 the trust's grantor is the seller of all such preneed contracts and the
25 trustee maintains adequate records that individually and separately
26 identify the payments, earnings and distributions for each preneed
27 contract.

28 5. Within a reasonable time after accepting a trusteeship or
29 receiving trust assets, a trustee shall review the trust assets and make
30 and implement decisions concerning the retention and disposition of
31 assets in order to bring the trust portfolio into compliance with the
32 purposes, terms, distribution requirements, other circumstances of the
33 trust, and all other requirements of sections 436.400 to 436.520.

34 6. All expenses of establishing and administering a preneed trust,
35 including, but not limited to, trustee's fees, legal and accounting fees,
36 investment expenses, and taxes may be paid from the trust.

37 7. The seller of a trust funded preneed contract shall be entitled
38 to all income, including, but not limited to, interest, dividends, capital
39 gains, and losses generated by the investment of preneed trust property
40 regarding such contract. The trustee of the trust may distribute all
41 income, net of losses, to the seller upon the final disposition of the
42 beneficiary and provision of the funeral and burial services and
43 facilities, and merchandise to, or for, the benefit of the beneficiary.

44 8. The trustee of a preneed trust shall maintain adequate books
45 and records of all transactions administered over the life of the trust
46 and pertaining to the trust generally. The trustee shall assist the seller
47 who established the trust or its successor in interest in the preparation
48 of the annual report described in section 436.460, RSMo. The seller
49 shall furnish to each contract purchaser, within fifteen days after
50 receipt of the purchaser's written request, a written statement of all
51 deposits made to such trust regarding such purchaser's contract

52 including the principal and interest paid to date, and the principal and
53 interest to be paid over the life of the trust.

54 9. Income of the trust shall accrue through the life of the trust
55 and shall only be distributed when the trust is terminated.

56 10. A preneed trust shall terminate when the trust principal no
57 longer includes any payments made under any preneed contract, and
58 upon such termination the trustee shall distribute all trust property,
59 including principal and undistributed income, to the seller which
60 established the trust.

436.435. 1. All property held in a preneed trust, including
2 principal and undistributed income, shall be invested and reinvested
3 by the trustee thereof and shall only be invested and reinvested in
4 investments which have reasonable potential for growth or producing
5 income. Funds in, or belonging to, a preneed trust shall not be invested
6 in any term life insurance product.

7 2. A trustee shall invest and manage trust assets as a prudent
8 investor would, by considering the purposes, terms, distribution
9 requirements, and other circumstances of the trust. In satisfying this
10 standard, the trustee shall exercise reasonable care, skill, and caution.
11 A trustee who has special skills or expertise, or is named trustee in
12 reliance upon the trustee's representation that the trustee has special
13 skills or expertise, has a duty to use those special skills or expertise
14 when investing and managing trust assets.

15 3. A trustee shall diversify the investments of the trust unless the
16 trustee reasonably determines that, because of special circumstances,
17 the purpose of the trust is better served without diversification.

18 4. In investing and managing trust assets, a trustee shall
19 consider the following as are relevant to the trust:

20 (1) General economic conditions;

21 (2) The possible effect of inflation or deflation;

22 (3) The expected tax consequences of investment decisions or
23 strategies;

24 (4) The role that each investment or course of action plays
25 within the overall trust portfolio;

26 (5) The expected total return from income and the appreciation
27 of capital;

28 (6) Other resources of the beneficiaries known to the trustee;

29 (7) Needs for liquidity, regularity of income, and preservation or
30 appreciation of capital;

31 (8) An asset's special relationship or special value, if any, to the
32 purposes of the trust or to one or more of the beneficiaries; and

33 (9) The size of the portfolio, nature and estimated duration of the
34 fiduciary relationship, and distribution requirements under the
35 governing instrument.

36 5. It is unlawful for any trustee, seller, provider, or preneed
37 agent to procure or accept a loan against any investment or asset of or
38 belonging to a preneed trust.

436.440. 1. A preneed trustee may delegate to an agent, duties
2 and powers that a prudent trustee of comparable skills would
3 reasonably delegate under the circumstances. The trustee shall
4 exercise reasonable care, skill, and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the agency, consistent
7 with the purposes and terms of the trust; and

8 (3) Periodically reviewing the agent's actions in order to monitor
9 the agent's performance and compliance with the terms of the agency.

10 2. In performing a delegated function, an agent owes a duty to
11 the trust to exercise reasonable care to comply with the terms of the
12 agency.

13 3. By accepting a delegation of powers or duties from the trustee
14 of a preneed trust, an agent submits to the jurisdiction of the courts of
15 this state.

16 4. Delegation of duties and powers to an agent shall not relieve
17 the trustee of any duty or responsibility imposed on the trustee by
18 sections 436.400 to 436.520 or the trust agreement.

436.445. A trustee shall not sell, invest, or authorize any
2 transaction involving the investment or management of trust property
3 with:

4 (1) The spouse of the trustee;

5 (2) The descendants, siblings, parents, or spouses of a seller or
6 an officer, manager, director or employee of a seller, provider, or
7 preneed agent;

8 (3) Agents or attorneys of a trustee, seller, or provider; or

9 (4) A corporation or other person or enterprise in which the

10 trustee, seller, or provider owns a significant interest or has an interest
11 that might affect the trustee's judgment.

436.450. 1. An insurance funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. A seller, provider, or any preneed agent, shall not receive or
5 collect from the purchaser of an insurance funded preneed contract,
6 any amount in excess of what is required to pay the premiums on the
7 insurance policy as assessed or required by the insurer as premium
8 payments for the insurance policy. A seller shall not receive or collect
9 any administrative or other fee from the purchaser for or in connection
10 with an insurance funded preneed contract, other than those fees or
11 amounts assessed by the insurer.

12 3. Payments collected by or on behalf of a seller for an insurance
13 funded preneed contract shall be promptly remitted to the insurer or
14 the insurer's designee as required by the insurer, provided that
15 payments shall not be retained or held by the seller or preneed agent
16 for more than thirty days from the date of receipt.

17 4. A term life insurance policy shall not be used to fund a
18 preneed contract.

19 5. It is unlawful for a seller, provider, or preneed agent to
20 procure or accept a loan against any insurance contract used to fund
21 a preneed contract.

22 6. Laws regulating insurance shall not apply to preneed
23 contracts, but shall apply to any insurance sold with a preneed
24 contract.

436.455. 1. A joint account funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. In lieu of a trust funded or insurance funded preneed contract,
5 a seller and the purchaser may agree in writing that all funds paid by
6 the purchaser for the preneed contract shall be deposited with a
7 financial institution chartered and regulated by the federal or state
8 government authorized to do business in Missouri in an account in the
9 joint names and under the joint control of the provider and
10 purchaser. There shall be a separate joint account established for each
11 preneed contract sold or arranged under this section.

12 3. All consideration paid by the purchaser under a joint account
13 funded contract shall be deposited into a joint account as authorized
14 by this section within five days of receipt of payment by the seller.

15 4. The financial institution shall hold, invest, and reinvest funds
16 deposited under this section in other accounts offered to depositors by
17 the financial institutions as provided in the written agreement of the
18 purchaser and the seller, provided the financial institution shall not
19 invest or reinvest any funds deposited under this section in term life
20 insurance or any investment that does not reasonably have the
21 potential to gain income or increase in value.

22 5. Income generated by preneed funds deposited under this
23 section shall be used to pay the reasonable expenses of administering
24 the account, and the balance of the income shall be distributed or
25 reinvested as provided in the written agreement of the purchaser and
26 seller.

27 6. Within fifteen days after a provider and a witness certifies to
28 the financial institution in writing, that the provider has furnished the
29 final disposition, funeral and burial services and facilities, and
30 merchandise as required by the preneed contract, or has provided
31 alternative funeral benefits for the beneficiary under special
32 arrangements made with the purchaser, the financial institution shall
33 distribute the deposited funds, if the certification has been approved
34 by the purchaser.

 436.456. At any time before final disposition, or before the
2 funeral or burial services, facilities, or merchandise described in a
3 preneed contract are furnished, the purchaser may cancel the contract,
4 if designated as revocable, without cause. In order to cancel the
5 contract the purchaser shall:

6 (1) In the case of a joint account funded preneed contract,
7 deliver written notice of the cancellation to the seller and the financial
8 institution. Within fifteen days of receipt of notice of the cancellation,
9 the financial institution shall distribute all deposited funds to the
10 purchaser. Interest shall be distributed as provided in the agreement
11 with the seller and purchaser;

12 (2) In the case of an insurance funded preneed contract, deliver
13 written notice of the cancellation to the seller. Within fifteen days of
14 receipt of notice of the cancellation, the seller shall notify the

15 purchaser that the cancellation of the contract shall not cancel any life
16 insurance funding the contract and that insurance cancellation are
17 required to be made in writing to the insurer;

18 (3) In the case of a trust funded preneed contract, deliver
19 written notice of the cancellation to the seller and trustee. Within
20 fifteen days of receipt of notice of the cancellation, the trustee shall
21 distribute one hundred percent of the trust property, including
22 principal and income, to the purchaser of the contract.

436.457. 1. A seller shall have the right to cancel the contract if
2 the purchaser is in default of payment for sixty days.

3 2. Prior to canceling the contract, the seller shall notify the
4 purchaser in writing that the contract shall be cancelled if payment is
5 not received within thirty days of the postmarked date of the
6 notice. The notice shall include the amount of payments due, the date
7 the payment is due, and the date of cancellation.

8 3. The purchaser shall have the opportunity to remit the default
9 payment in arrears if the seller chooses not to cancel the contract prior
10 to the death of the beneficiary and subsequent need for disposition,
11 services, facilities, or merchandise under the contract. If the arrearage
12 is not remitted, the seller shall credit the purchaser's preneed
13 payments toward the immediate costs for disposition, services,
14 facilities, and merchandise. If credit is applied, the seller may
15 determine such costs based on the seller's prices on the date of the
16 provision of the disposition, services, facilities, and merchandise.

17 4. Upon cancellation by the seller under this section, eighty
18 percent of the contract payments shall be refunded to the purchaser.

436.458. 1. A purchaser shall retain the right to select an
2 alternative provider as the designated provider under the original
3 contract if the alternative provider consents to the new
4 designation. Purchasers shall not be penalized or assessed any
5 additional fee or cost for such a transfer of the provider designation.

6 2. The original designated provider shall pay the newly
7 designated provider all payments owed to the original provider under
8 the contract. The newly designated provider shall assume all rights,
9 duties, obligations, and liabilities as the original provider under the
10 contract. Interest shall continue to be allocated to the seller as
11 provided for under the contract.

436.460. 1. Each seller shall file an annual report with the board
2 which shall contain the following information:

3 (1) The name, addresses and the contract number, if any, of all
4 purchasers as reflected in any preneed contract sold since the filing of
5 the last report;

6 (2) The total number and total face value of preneed contracts
7 sold since the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the
9 filing of the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents
11 authorized to sell preneed contracts on behalf of the seller;

12 (5) The date the report is submitted and the date of the last
13 report;

14 (6) The number of all Missouri preneed contracts fulfilled by the
15 seller during the preceding calendar year;

16 (7) The name and address of each provider with whom it is under
17 contract;

18 (8) The name and address of the person designated by the seller
19 as custodian of the seller's books and records relating to the sale of
20 preneed contracts;

21 (9) Written consent authorizing the board to order an
22 examination and, if necessary, an audit of any joint or trust account
23 established under sections 436.400 to 436.520, designated by depository
24 or account number;

25 (10) Written consent authorizing the board to order an
26 investigation, examination and if necessary an audit of its books and
27 records relating to the sale of preneed contracts; and

28 (11) Certification under oath that the report is complete and
29 correct attested to by an officer of the seller. The seller or officer shall
30 be subject to the penalty of making a false affidavit or declaration.

31 2. A seller that sells or has sold trust funded preneed contracts
32 shall also include in the annual report required by section 1 of this
33 section:

34 (1) The name and address of the financial institution in Missouri
35 in which it maintains a preneed trust account and the account numbers
36 of such trust accounts;

37 (2) The trust fund balance as reported in the previous year's

38 **report;**

39 **(3) The current trust fund balance;**

40 **(4) Principal contributions received by the trustee since the**
41 **previous report;**

42 **(5) Total trust earnings and total distributions to the seller since**
43 **the previous report;**

44 **(6) A statement of all assets and investments of the trust listing**
45 **cash, real and personal property, stocks, bonds, and other assets,**
46 **showing cost, acquisition date, and current market value of each asset**
47 **and investment;**

48 **(7) Total expenses, excluding distributions to the seller, since the**
49 **previous report; and**

50 **(8) Certification under oath that the information required by**
51 **subdivisions (1) to (7) of this subsection is complete and correct**
52 **attested to by a corporate officer of the trustee. The trustee shall be**
53 **subject to the penalty of making a false affidavit or declaration.**

54 **3. A seller that sells or who has sold joint account funded**
55 **preneed contracts shall also include in the annual report required by**
56 **section 1 of this section:**

57 **(1) The name and address of the financial institution in Missouri**
58 **in which it maintains the joint account and the account numbers for**
59 **each joint account;**

60 **(2) The amount on deposit in each joint account;**

61 **(3) The joint account balance as reported in the previous year's**
62 **report;**

63 **(4) Principal contributions placed into each joint account since**
64 **the filing of the previous report;**

65 **(5) Total earnings since the previous report;**

66 **(6) Total distributions to the seller from each joint account since**
67 **the previous report;**

68 **(7) Total expenses deducted from the joint account, excluding**
69 **distributions to the seller, since the previous report; and**

70 **(8) Certification under oath that the information required by**
71 **subdivisions (1) to (7) of this subsection is complete and correct**
72 **attested to by an authorized representative of the financial**
73 **institution. The affiant shall be subject to the penalty of making a false**
74 **affidavit or declaration.**

75 4. A seller that sells or who has sold any insurance funded
76 preneed contracts shall also include in the annual report required by
77 section 1 of this section:

78 (1) The name and address of each insurance company issuing
79 insurance to fund a preneed contract sold by the seller during the
80 preceding year;

81 (2) The status, total face value and total cash surrender value of
82 each policy; and

83 (3) Certification under oath that the information required by
84 subsections 1 to 5 of this section is complete and correct attested to by
85 an authorized representative of the insurer. The affiant shall be
86 subject to the penalty of making a false affidavit or declaration.

87 5. Each seller shall remit an annual reporting fee in an amount
88 established by the board by rule for each preneed contract sold in the
89 year since the date the seller filed its last annual report with the
90 board. This reporting fee shall be paid annually and may be collected
91 from the purchaser of the preneed contract as an additional charge or
92 remitted to the board from the funds of the seller. The reporting fee
93 shall be in addition to any other fees authorized under sections 436.400
94 to 436.520.

95 6. All reports required by this section shall be filed by the thirty-
96 first day of October of each year or by the date established by the
97 board by rule. Annual reports filed after the date provided herein shall
98 be subject to a late fee in an amount established by rule of the board.

99 7. A seller who fails to file the annual report on or before the
100 thirty-first day of October shall be prohibited from selling any preneed
101 contracts until the annual report, and all applicable fees, have been
102 paid to the board.

436.465. A seller shall maintain:

2 (1) Adequate records of all preneed contracts and related
3 agreements with providers, trustees of a preneed trust, and financial
4 institutions holding a joint account established under sections 436.400
5 to 436.520;

6 (2) Records of preneed contracts, including financial institution
7 statements and death certificates, shall be maintained by the seller for
8 the duration of the contract and for no less than five years after the
9 performance or cancellation of the contract.

436.470. 1. The board shall have authority to conduct inspections
2 and investigations of providers, sellers, and preneed agents and
3 conduct financial examinations of the books and records of providers,
4 sellers, and preneed agents and any trust or joint account to determine
5 compliance with sections 436.400 to 436.520, or to determine whether
6 grounds exist for disciplining a person licensed or registered under
7 sections 333.300 to 333.340, RSMo, at the discretion of the board and
8 with or without cause. The board shall conduct a financial examination
9 of the books and records of each seller as authorized by this section at
10 least once every five years, subject to available funding.

11 2. Upon determining that an inspection, investigation,
12 examination or audit shall be conducted, the board shall issue a notice
13 authorizing an employee or other person appointed by the board to
14 perform such inspection, investigation, examination or audit. The
15 notice shall instruct the person appointed by the board as to the scope
16 of the inspection, investigation, examination or audit.

17 3. The board shall not appoint or authorize any person to
18 conduct an inspection, investigation, examination, or audit under this
19 section if the individual has a conflict of interest or is affiliated with
20 the management of, or owns a pecuniary interest in, any person subject
21 to inspection, investigation, examination or audit under chapter 333,
22 RSMo, or sections 436.400 to 436.520.

23 4. The board may request that the director of the division of
24 professional registration, the director of the department of insurance,
25 financial institutions and professional registration, or the office of the
26 attorney general designate one or more investigators or financial
27 examiners to assist in any investigation, examination or audit, and such
28 assistance shall not be unreasonably withheld.

29 5. The person conducting the inspection, investigation, or audit
30 may enter the office, premises, establishment, or place of business of
31 any seller or licensed provider of preneed contracts, or any office,
32 premises, establishment, or place where the practice of selling or
33 providing preneed funerals is conducted, or where such practice is
34 advertised as being conducted for the purpose of conducting the
35 inspection, investigation, examination, or audit.

36 6. Upon request by the board, a licensee or registrant shall make
37 the books and records of the licensee or registrant available to the

38 board for inspection and copying at any reasonable time, including, any
39 insurance, trust, joint account, or financial institution records deemed
40 necessary by the board to determine compliance with sections 436.400
41 to 436.520.

42 7. The board shall have the power to issue subpoenas to compel
43 the production of records and papers by any licensee, trustee or
44 registrant of the board. Subpoenas issued under this section shall be
45 served in the same manner as subpoenas in a criminal case.

46 8. All sellers, providers, preneed agents, and trustees shall
47 cooperate with the board or its designee, the division of finance, the
48 department of insurance, financial institutions and professional
49 registration and the office of the attorney general, in any inspection,
50 investigation, examination or audit brought under this section.

51 9. This section shall not be construed to limit the board's
52 authority to file a complaint with the administrative hearing
53 commission charging a licensee or registrant with any actionable
54 conduct or violation, regardless of whether such complaint exceeds the
55 scope of acts charged in a preliminary public complaint filed with the
56 board and whether any public complaint has been filed with the board.

57 10. The board, the division of finance, the department of
58 insurance, financial institutions and professional registration and the
59 office of the attorney general may share information relating to any
60 preneed inspection, investigation, examination, or audit.

61 11. If an inspection, investigation, examination, or audit reveals
62 a violation of sections 436.400 to 436.520, the office of the attorney
63 general, with the consent and cooperation of the division of finance, the
64 office of the Comptroller of Currency or the Federal Deposit Insurance
65 Corporation, may initiate a judicial proceeding to:

- 66 (1) Declare rights;
- 67 (2) Approve a nonjudicial settlement;
- 68 (3) Interpret or construe the terms of the trust;
- 69 (4) Determine the validity of a trust or of any of its terms;
- 70 (5) Compel a trustee to report or account;
- 71 (6) Enjoin a seller, provider, or preneed agent from performing
72 a particular act;
- 73 (7) Enjoin a trustee from performing a particular act or grant to
74 a trustee any necessary or desirable power;

75 (8) Review the actions of a trustee, including the exercise of a
76 discretionary power;

77 (9) Appoint or remove a trustee;

78 (10) Determine trustee liability and grant any available remedy
79 for a breach of trust;

80 (11) Approve employment and compensation of preneed agents;

81 (12) Determine the propriety of investments;

82 (13) Determine the timing and quantity of distributions and
83 dispositions of assets; or

84 (14) Utilize any other power or authority vested in the attorney
85 general by law.

436.480. Upon the death or legal incapacity of a purchaser, all
2 rights and remedies granted to the purchaser under sections 436.400 to
3 436.520 shall be enforceable by and accrue to the benefit of the
4 purchaser's legal representative or his designated successor, and all
5 payments otherwise payable to the purchaser shall be paid to that
6 person.

436.485. 1. Any person, including the officers, directors,
2 partners, agents, or employees of such person, who shall knowingly and
3 willfully violate or assist or enable any person to violate any provision
4 of sections 436.400 to 436.520 by incompetence, misconduct, gross
5 negligence, fraud, misrepresentation, or dishonesty is guilty of a class
6 C felony. Each violation of any provision of sections 436.400 to 436.520
7 constitutes a separate offense and may be prosecuted individually. The
8 attorney general shall have concurrent jurisdiction with any local
9 prosecutor to prosecute under this section.

10 2. Any violation of the provisions of sections 436.400 to 436.520
11 shall constitute a violation of the provisions of section 407.020, RSMo.
12 In any proceeding brought by the attorney general for a violation of the
13 provisions of sections 436.400 to 436.520, the court may order all relief
14 and penalties authorized under chapter 407, RSMo, and, in addition to
15 imposing the penalties provided for in sections 436.400 to 436.520, order
16 the revocation or suspension of the license or registration of a
17 defendant seller, provider, or preneed agent.

436.490. 1. A provider that intends to sell or otherwise dispose
2 of all or a majority of its business assets, or its stock if a corporation,
3 shall notify the board at least sixty days prior to selling or otherwise

4 disposing of its business assets or stock, or ceasing to do business as a
5 provider, and shall file a notification report on a form established by
6 the board.

7 2. The report required by this section shall include:

8 (1) The name, phone number, and address of the purchasers of
9 any outstanding preneed contract for which the licensee is the
10 designated provider;

11 (2) The name and license numbers of all sellers authorized to
12 designate the licensee as a provider in a preneed contract;

13 (3) The name, address, and license number of the provider
14 assuming or agreeing to assume the licensee's obligations as a provider
15 under a preneed contract, if any;

16 (4) The name, address, and phone number of a custodian who
17 will maintain the books and records of the provider containing
18 information about preneed contracts in which the licensee is or was
19 formerly designated as provider;

20 (5) A final annual report containing the information required by
21 section 436.460;

22 (6) The date the provider intends to sell or otherwise dispose of
23 its business assets or stock, or cease doing business; and

24 (7) Any other information required by the board by rule.

25 3. Within three days after the provider sells or disposes of its
26 assets or stock or ceases doing business, the former provider shall
27 notify each seller in writing that the former provider has sold or
28 disposed of its assets or stock or has ceased doing business.

436.500. 1. A seller that intends to sell or otherwise dispose of all
2 or a majority of its business assets or its stock, shall notify the board
3 at least sixty days prior to selling or otherwise disposing of its assets
4 or stock, or ceasing to do business as a seller, and shall file a
5 notification report on a form established by the board.

6 2. The report required by this section shall include:

7 (1) A notarized and signed statement from the person assuming
8 or agreeing to assume the obligations of the seller indicating that the
9 assuming seller has been provided with a copy of the seller's final
10 annual report and has consented to assuming the outstanding
11 obligations of the seller;

12 (2) In lieu of the notarized statement required by subdivision (1)

13 of this subsection, the seller may file a plan detailing how the assets of
14 the seller will be set aside and used to service all outstanding preneed
15 contracts sold by the seller; and

16 (3) Any other information required by the board by rule.

17 3. Within thirty days after assuming the obligations of a seller
18 under this section, the assuming seller shall:

19 (1) Notify each provider in writing that the former seller has
20 sold or disposed of its assets or stock or has ceased doing business; and

21 (2) Provide written notification to the purchasers of each
22 preneed contract assumed by the seller indicating that the former
23 seller has transferred ownership or has ceased doing business.

24 4. Nothing in this section shall be construed to require the board
25 to audit, inspect, investigate, examine, or edit the books and records of
26 a seller subject to the provisions of this section nor shall this section
27 be construed to amend, rescind, or supersede any duty imposed on, or
28 due diligence required of, an entity assuming the obligations of the
29 seller.

30 5. The office of the attorney general shall have the authority to
31 initiate legal action to compel or otherwise ensure compliance with this
32 section by a former provider licensee.

436.505. A preneed contract may offer the purchaser the option
2 to acquire and maintain credit life insurance on the life of the
3 purchaser. Such insurance shall provide for the payment of death
4 benefits to the seller in an amount equal to the total of all contract
5 payments unpaid as of the date of such purchaser's death, and shall be
6 used solely to make those unpaid payments.

436.510. If a seller shall fail to make timely payment of an
2 amount due a purchaser or a provider under the provisions of sections
3 436.400 to 436.520, the purchaser or provider, as appropriate, shall have
4 the right, in addition to other rights and remedies against such seller,
5 to make demand upon the trustee of the preneed trust for the contract
6 to distribute to the purchaser or provider from the trust, as damages
7 for its breach, an amount equal to all deposits made into the trust for
8 the contract.

436.520. 1. The board shall promulgate and enforce rules for
2 administration and enforcement of sections 436.400 to 436.520 including
3 the establishment of the amount of any fees authorized thereunder for

4 the transaction of its business and for standards of service and practice
5 to be followed for the licensing and registration of providers, sellers
6 and preneed agents deemed necessary for the public good and
7 consistent with the laws of this state. Such fees shall be set at a level
8 to produce revenue which does not substantially exceed the cost and
9 expense of administering this chapter.

10 2. Any rule or portion of a rule, as that term is defined in section
11 536.010, RSMo, that is created under the authority delegated in this
12 section shall become effective only if it complies with and is subject to
13 all of the provisions of chapter 536, RSMo, and, if applicable, section
14 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
15 and if any of the powers vested with the general assembly under
16 chapter 536, RSMo, to review, to delay the effective date, or to
17 disapprove and annul a rule are subsequently held unconstitutional,
18 then the grant of rulemaking authority and any rule proposed or
19 adopted after August 28, 2009, shall be invalid and void.

Bill ✓

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